

2003 DRAFTING REQUEST**Bill**Received: **11/13/2002**Received By: **rryan**Wanted: **As time permits**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**By/Representing: **Sandy Lonergan**This file may be shown to any legislator: **NO**Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - drugs**Extra Copies: **rlr**Submit via email: **YES**Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Possession of ecstasy

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan	kgilfoy					S&L
	11/18/2002	10/10/2003					
	mdsida						
	08/15/2003						
	mdsida						
	09/10/2003						

10/13/2003 11:20:58 AM

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1			rschluet	_____	sbasford	sbasford	
			10/10/2003	_____	10/10/2003	10/13/2003	
				_____		sbasford	
				_____		10/13/2003	

FE Sent For:

<END>

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/1			rschluet 10/10/2003		sbasford 10/10/2003		

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FE Sent For:

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May Contact:

Addl. Drafters:

Subject: **Criminal Law - drugs**Extra Copies: **MGD**Submit via email: **YES**Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Penalty for ecstasy

Instructions:

Same as 2001 AB 464 (LRB-2956) as amended by the assembly and the senate judiciary

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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FE Sent For:

11-10/10
Kmg

10-10-3

<END> JF

+mgd

2001 ASSEMBLY BILL 464

July 19, 2001 - Introduced by Representatives UNDERHEIM, KRAWCZYK, SUDER, PLALE, HAHN, PLOUFF, LIPPERT, RYBA, VRAKAS, OWENS, TOWNSEND, PETROWSKI, MUSSER, ALBERS, LADWIG, URBAN, D. MEYER, SYKORA, OLSEN, J. FITZGERALD, STONE and OTT, cosponsored by Senators ERPENBACH, ROESSLER, ROSENZWEIG, HUELSMAN, LAZICH, DARLING and SCHULTZ. Referred to Committee on Criminal Justice.

1 AN ACT *to renumber and amend* 961.41 (1) (im) and 961.41 (1m) (im); *to*
2 *amend* 961.41 (1) (b), 961.41 (1m) (b), 961.41 (2) (b), 961.41 (2) (cm) and 961.41
3 (3g) (f); and *to create* 961.14 (7) (p), 961.41 (1) (hm), 961.41 (1) (im) 1. to 6.,
4 961.41 (1m) (hm), 961.41 (1m) (im) 1. to 6. and 961.41 (2) (bm) of the statutes;
5 *relating to:* prohibitions related to certain controlled substances and
6 providing ~~penalties~~ ^{ies}

Analysis by the Legislative Reference Bureau

Current law prohibits manufacturing, distributing, delivering, ~~possessing~~ with intent to manufacture, distribute, or deliver, or simply ~~possessing~~, many drugs, except that the prohibitions do not apply to certain people who are ~~exempted~~ by federal or state law. For some of these drugs, the penalties for manufacturing, distributing, delivering, or possessing with intent to manufacture, distribute, or deliver, are based on the amount of the drug involved, ~~though~~ the penalties for simple possession are not based on the amount. SS

This bill prohibits manufacturing, distributing, delivering, or possessing with intent to manufacture, distribute, or deliver, 4-methylthioamphetamine (4-MTA or flatliner), unless a person is ~~exempted~~ from the prohibition by federal or state law. The bill assigns the same penalties for unlawfully manufacturing, distributing, delivering, or possessing with intent to manufacture, distribute, or deliver, 4-MTA as are currently assigned to violations involving phencyclidine (PCP). The penalties, otherwise

for offenses committed on
after February 1, 2003,

ASSEMBLY BILL 464

range from a mandatory fine of ^{12.5} ~~\$1,000 to \$200,000~~ ^{not more than} ~~and the possibility of~~ ²⁵ ~~imprisonment for not more than seven years and six months~~ ^{or both,} for a violation involving three grams or less of the drug, to a ~~mandatory~~ ^{or} fine of ~~\$1,000 to \$500,000~~ ¹ ~~and~~ ^{or both,} ~~mandatory~~ ⁰ imprisonment for not less than ~~ten years~~ ^{more than 45 years} for a violation involving more than ~~100~~ grams of the drug. (Imprisonment consists of a term of incarceration and a term of extended supervision.)

⁵⁰ The bill increases the penalties for unlawfully manufacturing, distributing, delivering, and possessing with intent to manufacture, distribute, or deliver, Gamma-hydroxybutyric acid (GHB), gamma-butyrolactone (GBL), 3,4-methylenedioxymethamphetamine (MDMA or ecstasy), 4-bromo-2,5-dimethoxy-beta-phenylethylamine (2-CB or nexus), ketamine, and flunitrazepam, ~~marketed under the name (rohypno)~~ ^{also known as} to the penalty levels for PCP. The bill also increases the penalties for unlawfully manufacturing, distributing, delivering, and possessing with intent to manufacture, distribute, or deliver, counterfeit versions of PCP, lysergic acid diethylamide (LSD), methamphetamine, GHB, GBL, MDMA, 2-CB, 4-MTA, ketamine, and flunitrazepam to the same level as violations involving the genuine drugs. ^{Finally,} ^{AP:INS}

¹⁰ The bill ~~also~~ increases the penalty for simple possession of MDMA from a fine of not more than \$500 or confinement in jail for not more than 30 days, or both, to a fine of not more than ~~\$1,000~~ ^{SIX} or imprisonment for not more than ~~two~~ years, or both. The increased penalty for simple possession of MDMA is the same as the ~~current~~ ^{current} penalty for simple possession of GHB, GBL, ketamine, or flunitrazepam.

^{CRIME} For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

^{INS} ^{1/0} ^{on or after that date} ^{for offenses committed on or after February 1, 2003}
The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

¹ ~~SECTION 1. 961.14 (7) (p) of the statutes is created to read:~~

² 961.14 (7) (p) 4-methylthioamphetamine, commonly known as "4-MTA."

³ SECTION 2. 961.41 (1) (b) of the statutes is amended to read:

⁴ 961.41 (1) (b) Except as provided in pars. (cm) and (e) to ~~(h)~~ ^(hm), any other
⁵ controlled substance included in schedule I, II or III, or a controlled substance analog
⁶ of any other controlled substance included in schedule I or II, may be fined not more
⁷ than \$15,000 or imprisoned for not more than 7 years and 6 months or both.

⁸ SECTION 3. 961.41 (1) (hm) of the statutes is created to read:

ASSEMBLY BILL 464

1 961.41 (1) (hm) Gamma-hydroxybutyric acid, gamma-butyrolactone,
2 3,4-methylenedioxymethamphetamine,
3 4-bromo-2,5-dimethoxy-beta-phenylethylamine, 4-methylthioamphetamine,
4 ketamine, or a controlled substance analog of gamma-hydroxybutyric acid,
5 gamma-butyrolactone, 3,4-methylenedioxymethamphetamine,
6 4-bromo-2,5-dimethoxy-beta-phenylethylamine, or 4-methylthioamphetamine is
7 subject to the following penalties if the amount manufactured, distributed, or
8 delivered is:

9 1. Three grams or less, the person shall be fined not less than \$1,000 nor more
10 than \$200,000 and may be imprisoned for not more than 7 years and 6 months.

11 2. More than 3 grams but not more than 10 grams, the person shall be fined
12 not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not less than
13 6 months nor more than 7 years and 6 months.

14 3. More than 10 grams but not more than 50 grams, the person shall be fined
15 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than
16 one year nor more than 22 years and 6 months.

17 4. More than 50 grams but not more than 200 grams, the person shall be fined
18 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than
19 3 years nor more than 22 years and 6 months.

20 5. More than 200 grams but not more than 400 grams, the person shall be fined
21 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than
22 5 years nor more than 22 years and 6 months.

23 6. More than 400 grams, the person shall be fined not less than \$1,000 nor more
24 than \$500,000 and shall be imprisoned for not less than 10 years nor more than 45
25 years.

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SECTION 4

1 **SECTION 4.** 961.41 (1) (im) of the statutes is renumbered 961.41 (1) (im) (intro.)
2 and amended to read:

3 961.41 (1) (im) (intro.) Flunitrazepam, ~~may be fined not more than \$15,000 or~~
4 ~~imprisoned for not more than 7 years and 6 months or both.~~ is subject to the following
5 penalties if the amount manufactured, distributed, or delivered is:

6 **SECTION 5.** 961.41 (1) (im) 1. to 6. of the statutes are created to read:

7 961.41 (1) (im) 1. Three grams or less, the person shall be fined not less than
8 \$1,000 nor more than \$200,000 and may be imprisoned for not more than 7 years and
9 6 months.

10 2. More than 3 grams but not more than 10 grams, the person shall be fined
11 not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not less than
12 6 months nor more than 7 years and 6 months.

13 3. More than 10 grams but not more than 50 grams, the person shall be fined
14 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than
15 one year nor more than 22 years and 6 months.

16 4. More than 50 grams but not more than 200 grams, the person shall be fined
17 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than
18 3 years nor more than 22 years and 6 months.

19 5. More than 200 grams but not more than 400 grams, the person shall be fined
20 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than
21 5 years nor more than 22 years and 6 months.

22 6. More than 400 grams, the person shall be fined not less than \$1,000 nor more
23 than \$500,000 and shall be imprisoned for not less than 10 years nor more than 45
24 years.

25 **SECTION 6.** 961.41 (1m) (b) of the statutes is amended to read:

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961.41 (1m) (b) Except as provided in pars. (cm) and (e) to (h) (hm), any other controlled substance included in schedule I, II or III, or a controlled substance analog of any other controlled substance included in schedule I or II, may be fined not more than \$15,000 or imprisoned for not more than 7 years and 6 months or both.

SECTION 7. 961.41 (1m) (hm) of the statutes is created to read:

961.41 (1m) (hm) Gamma-hydroxybutyric acid, gamma-butyrolactone, 3,4-methylenedioxymethamphetamine

4-bromo-2,5-dimethoxy-beta-phenylethylamine, 4-methylthioamphetamine, ketamine, or a controlled substance analog of gamma-hydroxybutyric acid, gamma-butyrolactone, 3,4-methylenedioxymethamphetamine

4-bromo-2,5-dimethoxy-beta-phenylethylamine, or 4-methylthioamphetamine is subject to the following penalties if the amount possessed, with intent to manufacture, distribute, or deliver is :

1. Three grams or less, the person shall be fined not less than \$1,000 nor more than \$200,000 and may be imprisoned for not more than 7 years and 6 months.

2. More than 3 grams but not more than 10 grams, the person shall be fined not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not less than 6 months nor more than 7 years and 6 months.

3. More than 10 grams but not more than 50 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than one year nor more than 22 years and 6 months.

4. More than 50 grams but not more than 200 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 3 years nor more than 22 years and 6 months.

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SECTION 7

1 5. More than 200 grams but not more than 400 grams, the person shall be fined
2 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than
3 5 years nor more than 22 years and 6 months.

4 6. More than 400 grams, the person shall be fined not less than \$1,000 nor more
5 than \$500,000 and shall be imprisoned for not less than 10 years nor more than 45
6 years.

7 SECTION 8. 961.41 (1m) (im) of the statutes is renumbered 961.41 (1m) (im)
8 (intro.) and amended to read:

9 961.41 (1m) (im) (intro.) Flunitrazepam, ~~may be fined not more than \$15,000~~
10 ~~or imprisoned for not more than 7 years and 6 months or both.~~ is subject to the
11 following penalties if the amount possessed, with intent to manufacture, distribute,
12 or deliver, is:

13 SECTION 9. 961.41 (1m) (im) 1. to 6. of the statutes are created to read:

14 961.41 (1m) (im) 1. Three grams or less, the person shall be fined not less than
15 \$1,000 nor more than \$200,000 and may be imprisoned for not more than 7 years and
16 6 months.

17 2. More than 3 grams but not more than 10 grams, the person shall be fined
18 not less than \$1,000 nor more than \$250,000 and shall be imprisoned for not less than
19 6 months nor more than 7 years and 6 months.

20 3. More than 10 grams but not more than 50 grams, the person shall be fined
21 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than
22 one year nor more than 22 years and 6 months.

23 4. More than 50 grams but not more than 200 grams, the person shall be fined
24 not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than
25 3 years nor more than 22 years and 6 months.

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~~5. More than 200 grams but not more than 400 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 5 years nor more than 22 years and 6 months.~~

~~6. More than 400 grams, the person shall be fined not less than \$1,000 nor more than \$500,000 and shall be imprisoned for not less than 10 years nor more than 45 years.~~

SECTION 10. 961.41 (2) (b) of the statutes is amended to read:

961.41 (2) (b) ~~Any other~~ Except as provided in pars. (a) and (bm), any
counterfeit substance included in schedule I, II or III, may be fined not more than
\$15,000 or imprisoned for not more than 7 years and 6 months or both.

SECTION 11. 961.41 (2) (bm) of the statutes is created to read:

961.41 (2) (bm) A counterfeit substance that is a counterfeit of phencyclidine, methamphetamine, lysergic acid diethylamide, gamma-hydroxybutyric acid, gamma-butyrolactone, 3,4-methylenedioxymethamphetamine, 4-bromo-2,5-dimethoxy-beta-phenylethylamine, 4-methylthioamphetamine, or ketamine is punishable by the applicable fine and imprisonment for manufacture, distribution, delivery, or possession with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (1m).

SECTION 12. 961.41 (2) (cm) of the statutes is amended to read:

961.41 (2) (cm) A counterfeit substance which is flunitrazepam, ~~may be fined not more than \$15,000 or imprisoned for not more than 7 years and 6 months or both~~ is punishable by the applicable fine and imprisonment for manufacture, distribution, delivery, or possession with intent to manufacture, distribute, or deliver, of the genuine controlled substance under sub. (1) or (1m).

SECTION 13. 961.41 (3g) (f) of the statutes is amended to read:

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1 961.41 (3g) (f) If a person possesses or attempts to possess
2 gamma-hydroxybutyric acid, gamma-butyrolactone,
3 ~~3,4-methylenedioxymethamphetamine~~, ketamine, or flunitrazepam, the person
4 ~~may be fined not more than \$5,000 or imprisoned for not more than 2 years or both.~~

5 (END)

ASSEMBLY AMENDMENT 2, TO 2001 ASSEMBLY BILL 464

November 6, 2001 - Offered by Representatives STASKUNAS, UNDERHEIM, HUBER, GROTHMAN, CARPENTER, KAUFERT and SKINDRUD.

At the locations indicated, amend the bill as follows:

1. Page 7, line 25; delete the material beginning with that line and ending with page 8, line 4, and substitute:

SECTION 12g. 961.41 (3g) (b) of the statutes is amended to read:

961.41 (3g) (b) Except as provided in pars. (c), (d), ~~(e)~~ (e) and, (f), and (g), if the person possesses or attempts to possess a controlled substance or controlled substance analog, other than a controlled substance included in schedule I or II that is a narcotic drug or a controlled substance analog of a controlled substance included in schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor, punishable under s. 939.61.

SECTION 12r. 961.41 (3g) (g) of the statutes is created to read:

961.41 (3g) (g) If a person possess 3,4-methylenedioxymethamphetamine and the person has not previously been convicted for an offense under this chapter, the

INS A from
SA-1, then
INS 1/1

Other drugs generally.

, as affected by 2001 Wisconsin Act 109,

INS
1/10

INS
1/11

1 person may be fined not more than \$5,000 or imprisoned for not more than one year
2 in a county jail or both, and if the person has previously been convicted for an offense
3 under this chapter, the person may be fined not more than \$5,000 or imprisoned for
4 not more than two years or both.”.

5 (END)

SA-1

**SENATE AMENDMENT 1,
TO 2001 ASSEMBLY BILL 464**

March 11, 2002 – Offered by COMMITTEE ON JUDICIARY, CONSUMER AFFAIRS, AND
CAMPAIGN FINANCE REFORM.

At the locations indicated, amend the bill as follows:

1. Page 1, line 5: delete the material inserted by assembly amendment 1 and substitute "prohibitions related to certain controlled substances"

2. Page 2, line 1, before that line insert:

[#]
SECTION ~~1g.~~ 961.14 (5) (ac) of the statutes is created to read:

961.14 (5) (ac) 1,4-Butanediol, commonly known as "1,4-BD," if it is intended for ingestion by humans.

[#]
SECTION ~~1m.~~ 961.14 (5) (ag) of the statutes is amended to read:

961.14 (5) (ag) Gamma-hydroxybutyric acid (commonly known as gamma hydroxybutyrate or "GHB") and ~~gamma-butyrolactone~~ except any drug product containing gamma-hydroxybutyric acid that is approved by the U.S. department of health and human services under 21 USC 355 or 356.

SECTION ~~1r.~~ 961.14 (5) (aj) of the statutes is created to read:

[#]

INS A

1 961.14 (5) (aj) Gamma-butyrolactone if it is intended for ingestion by humans.

2 [#]
SECTION ~~1x~~ 961.18 (3) (bm) of the statutes is created to read:

3 961.18 (3) (bm) Any drug product containing gamma-hydroxybutyric acid that
4 is approved by the U.S. department of health and human services under 21 USC 355
5 or 356.

6 [#]
SECTION ~~1x~~ 961.41 (1) (hm) (intro.) of the statutes, as ^{affected} ~~created~~ by 2001
7 Wisconsin Act ¹⁰⁹ ~~18~~, is amended to read:

8 ~~961.41 (1) (hm) (intro.) Gamma-hydroxybutyric acid, gamma-butyrolactone,~~
9 ~~1,4-Butanediol, 3,4-methylenedioxymethamphetamine,~~
10 ~~4-bromo-2,5-dimethoxy-beta-phenylethylamine, 4-methylthioamphetamine,~~
11 ~~ketamine, or a controlled substance analog of gamma-hydroxybutyric acid,~~
12 ~~gamma-butyrolactone, 3,4-methylenedioxymethamphetamine,~~
13 ~~4-bromo-2,5-dimethoxy-beta-phenylethylamine, or 4-methylthioamphetamine is~~
14 ~~subject to the following penalties if the amount manufactured, distributed, or~~
15 ~~delivered is:~~

16 [#]
SECTION ~~1x~~ 961.41 (1m) (hm) (intro.) of the statutes, as ^{affected} ~~created~~ by 2001
17 Wisconsin Act ¹⁰⁹ ~~18~~, is amended to read:

18 961.41 (1m) (hm) (intro.) Gamma-hydroxybutyric acid,
19 gamma-butyrolactone, 1,4-Butanediol, 3,4-methylenedioxymethamphetamine
20 4-bromo-2,5-dimethoxy-beta-phenylethylamine, 4-methylthioamphetamine,
21 ketamine, or a controlled substance analog of gamma-hydroxybutyric acid,
22 gamma-butyrolactone, 3,4-methylenedioxymethamphetamine
23 4-bromo-2,5-dimethoxy-beta-phenylethylamine, or 4-methylthioamphetamine is
24 subject to the following penalties if the amount possessed, with intent to
25 manufacture, distribute, or deliver is:

1 **3.** Page 7, line 25: after page 1, line 10, of the material inserted by assembly
2 amendment 2, insert:

3 ~~SECTION 12m.~~ [#] 961.41 (3g) (f) of the statutes is amended to read:

4 961.41 (3g) (f) If a person possesses or attempts to possess
5 gamma-hydroxybutyric acid, gamma-butyrolactone, 1,4-Butanediol, ketamine or
6 flunitrazepam, the person may be fined not more than \$5,000 or imprisoned for not
7 more than 2 years or both.

8 (END)

7 (END)

Mtg w/ Marne + Det. Chavez

Ecstasy - Possession = 1 yr misdemeanor
2d + subseq. = Class I

Marne will ✓ w/ Rep. U. to find out
what to do w/ last session's provisions

7/14 Plc from Marne - make it consistent w/ Act 109

7/15 - left msg (counting priors - 1A?)

7/17 - Sugg'd to Marne that we wait to see what
happens w/ SB4 She said ok,

Dsida, Michael

From: Dsida, Michael
Sent: Friday, July 18, 2003 2:28 PM
To: Wischnewski, Marne
Subject: and while we're waiting...

Here are two more questions you can answer:

1. Under current law, if a person is found guilty of a first offense for possession or attempted possession of ecstasy (or certain other drugs), the court may postpone entering the verdict and place the person on probation. If the person complies with the terms of probation, the court dismisses the case without a judgment of conviction ever being entered. (If the person violates his or her probation, the judgment is entered and the person is sentenced.) The person is eligible for this disposition only once. See s. 961.47 (1). This provision does not apply to heroin, cocaine, the drugs listed in s. 961.41 (3g) (d), marijuana, and certain date-rape drugs. Should it continue to apply to ecstasy?

2. Under s. 961.472, if a person is found guilty of possession or attempted possession of heroin, cocaine, or one of the drugs listed in s. 961.41 (3g) (d), the court is required to order the person to submit to an assessment of his or her use of controlled substances. This provision does not apply to ecstasy. Should it?

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@state.legis.wi.us

Plc - Det. Chavez 513-9551

Treat both like heroin + cocaine



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-06777

MGD: King

WED. OCT 15

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ^{Gen. Cat.} relating to: possession of ecstasy and providing penalties.

Analysis by the Legislative Reference Bureau

Current law prohibits the possession of the controlled substance ecstasy (3,4-methylenedioxymethamphetamine or MDMA). A person who violates this prohibition is guilty of a misdemeanor (simple possession) and may be fined not more than \$500 or sentenced to the county jail for up to 30 days or both. (Significantly higher penalties apply ^{known as} and the person is guilty of a felony ^{as} if the person possesses ecstasy with intent to manufacture, distribute, or deliver it.) Current law also permits a court to suspend the prosecution of a person who pleads guilty to or is found guilty of simple possession of ~~certain drugs, including~~ ecstasy (but excluding heroin, cocaine, LSD, methamphetamine, marijuana, and certain date-rape drugs), if the person has no prior controlled substance offenses. In such a case, the court places the person on probation. If the person violates the requirements of probation, the court reinstates the case and sentences the person. If the person complies with those requirements, the court dismisses the case without ever entering a judgment of conviction.

This bill increases the penalties for simple possession of ecstasy. If a person possesses ecstasy and has no prior controlled substance convictions, the person is guilty of a misdemeanor and may be fined not more than \$5,000 or sentenced to the county jail for up to one year or both. If the person has one or more prior controlled substance convictions, the person is guilty of a felony and may be fined not more than \$10,000 or sentenced to a term of imprisonment (consisting of a term of confinement in state prison followed by a term of extended supervision) of up to three and a half years or both. The bill also eliminates the option of suspending the prosecution of

a person who pleads guilty to or is found guilty of simple possession of ecstasy. Finally, the bill requires a person who is convicted of possession or attempted possession of ecstasy to submit to an assessment of the person's use of controlled substances, in the same manner as is required under current law for a conviction related to heroin, cocaine, LSD, or methamphetamine.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

① SECTION 1. 961.41 (3g) (b) of the statutes, as affected by 2001 Wisconsin Act 109,

② ~~2001~~ 2003 Wisconsin Act 49, is amended to read:

3 961.41 (3g) (b) *Other drugs generally.* Except as provided in pars. (c) to (g) (h),
4 if the person possesses or attempts to possess a controlled substance or controlled
5 substance analog, other than a controlled substance included in schedule I or II that
6 is a narcotic drug or a controlled substance analog of a controlled substance included
7 in schedule I or II that is a narcotic drug, the person is guilty of a misdemeanor,
8 punishable under s. 939.61.

History: 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39, 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109.

9 SECTION 2. 961.41 (3g) (c) of the statutes, as affected by 2001 Wisconsin Act 109,
10 is amended to read:

11 961.41 (3g) (c) *Cocaine and cocaine base.* If a person possess or attempts to
12 possess cocaine or cocaine base, or a controlled substance analog of cocaine or cocaine
13 base, the person shall be fined not more than \$5,000 and may be imprisoned for not
14 more than one year in the county jail upon a first conviction and is guilty of a Class
15 I felony for a 2nd or subsequent offense under s. 961.48 (3). For purposes of this

move →

1 ~~paragraph, an offense is considered a 2nd or subsequent offense if, prior to the~~
2 ~~offender's conviction of the offense, the offender has at any time been convicted of any~~
3 ~~felony or misdemeanor under this chapter or under any statute of the United States~~
4 ~~or of any state relating to controlled substances, controlled substance analogs,~~
5 ~~narcotic drugs, marijuana, or depressant, stimulant, or hallucinogenic drugs~~ plain

History: 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339/403; 1989 a. 31, 56, 121; 1991 a. 39; 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109.

6 **SECTION 3.** 961.41 (3g) (d) of the statutes, as affected by 2001 Wisconsin Act 109,

7 ~~and~~ 2003 Wisconsin Act 49, is amended to read:

8 961.41 (3g) (d) *Certain hallucinogenic and stimulant drugs.* If a person
9 possesses or attempts to possess lysergic acid diethylamide, phencyclidine,
10 amphetamine, methcathinone, psilocin or psilocybin, or a controlled substance
11 analog of lysergic acid diethylamide, phencyclidine, amphetamine, methcathinone,
12 psilocin or psilocybin, the person may be fined not more than \$5,000 or imprisoned
13 for not more than one year in the county jail or both upon a first conviction and is
14 guilty of a Class I felony for a 2nd or subsequent offense under s. 961.48 (3). For

15 ~~purposes of this paragraph, an offense is considered a 2nd or subsequent offense if,~~
16 ~~prior to the offender's conviction of the offense, the offender has at any time been~~
17 ~~convicted of any felony or misdemeanor under this chapter or under any statute of~~
18 ~~the United States or of any state relating to controlled substances, controlled~~
19 ~~substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or~~
20 ~~hallucinogenic drugs~~ plain

History: 2003 a. 49.

History: 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 490; 1995 a. 448; 1999 a. 48; 2001 a. 109.

21 **SECTION 4.** 961.41 (3g) (e) of the statutes, as affected by 2001 Wisconsin Act 109,

22 is amended to read:

1 961.41 (3g) (e) *Tetrahydrocannabinols*. If a person possesses or attempts to
2 possess tetrahydrocannabinols included under s. 961.14 (4) (t), or a controlled
3 substance analog of tetrahydrocannabinols, the person may be fined not more than
4 \$1,000 or imprisoned for not more than 6 months or both upon a first conviction and
5 is guilty of a Class I felony for a 2nd or subsequent offense under s. 961.48 (3). For

6 ~~purposes of this paragraph, an offense is considered a 2nd or subsequent offense if,~~
7 ~~prior to the offender's conviction of the offense, the offender has at any time been~~
8 ~~convicted of any felony or misdemeanor under this chapter or under any statute of~~
9 ~~the United States or of any state relating to controlled substances, controlled~~
10 ~~substance analogs, narcotic drugs, marijuana, or depressant, stimulant, or~~
11 ~~hallucinogenic drugs.~~ plain

History: 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39, 138; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109.

12 **SECTION 5.** 961.41 (3g) (h) of the statutes is created to read:

13 961.41 (3g) (h) *Ecstasy*. If a person possesses or attempts to possess
14 3,4-methylenedioxymethamphetamine, or a controlled substance analog of
15 3,4-methylenedioxymethamphetamine, the person may be fined not more than
16 \$5,000 or imprisoned for not more than one year in the county jail or both upon a first
17 conviction and is guilty of a Class I felony for a 2nd or subsequent offense.

18 **SECTION 6.** 961.472 (2) of the statutes, as affected by ~~2001 Wisconsin Act 100~~
19 ~~(100)~~ 2003 Wisconsin Act 49, is amended to read:

20 961.472 (2) Except as provided in sub. (5), if a person pleads guilty or is found
21 guilty of possession or attempted possession of a controlled substance or controlled
22 substance analog under s. 961.41 (3g) (am), (c), or (d) [✓] ~~or (h)~~ [✓], the court shall order the
23 person to comply with an assessment of the person's use of controlled substances.
24 The court's order shall designate a facility that is operated by or pursuant to a

1 contract with the county department established under s. 51.42 and that is certified
2 by the department of health and family services to provide assessment services to
3 perform the assessment and, if appropriate, to develop a proposed treatment plan.

4 The court shall notify the person that noncompliance with the order limits the court's
5 ability to determine whether the treatment option under s. 961.475 is appropriate.

6 The court shall also notify the person of the fee provisions under s. 46.03 (18) (fm).

History: 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 118; 1995 a. 27 s. 9126 (19); 1995 a. 448 s. 286; Stats. 1995 s. 961.472; 1999 a. 48; 2001 a. 109.

7 **SECTION 7.** 961.48 (3) of the statutes, as affected by 2001 Wisconsin Act 109,

8 is amended to read:

9 961.48 (3) For purposes of this section and s. 961.41 (3g), a felony ² ~~an offense~~
10 ~~under this chapter~~ is considered a 2nd or subsequent offense if, prior to the offender's
11 conviction of the offense, the offender has at any time been convicted of any felony
12 or misdemeanor offense under this chapter or under any statute of the United States
13 or of any state relating to controlled substances or controlled substance analogs,
14 narcotic drugs, marijuana or depressant, stimulant or hallucinogenic drugs.

History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 482, 490; 1995 a. 402; 1995 a. 448 s. 288; Stats. 1995 s. 961.48; 1997 a. 35 ss. 340, 584; 1997 a. 220; 1999 a. 48; 2001 a. 109.

15 **SECTION 8.** 961.48 (5) of the statutes, as created by 2003 Wisconsin Act 49, is

16 amended to read:

17 961.48 (5) This section does not apply if the person is presently charged with
18 a felony under s. 961.41 (3g) (c), (d), (e), ~~or~~ (g), or (h). ✓

History: 2003 a. 49.

19 **SECTION 9.** 961.55 (1) (d) 3. of the statutes, as affected by 2001 Wisconsin Act

20 ~~109 and~~ 2003 Wisconsin Act 49, is amended to read:

21 961.55 (1) (d) 3. A vehicle is not subject to forfeiture for a violation of s. 961.41
22 (3g) (b) to ~~(g)~~ [✓] (h); and

History: 1971 c. 219, 307; 1981 c. 267; 1985 a. 245, 328; 1987 a. 339; 1989 a. 121; 1993 a. 118, 482; 1995 a. 448 ss. 297 to 305; Stats. 1995 s. 961.55; 1997 a. 220; 1999 a. 48, 57, 110; 2001 a. 109.

SECTION 10. 971.365 (1) (c) of the statutes, as affected by 2001 Wisconsin Act 109 and 2003 Wisconsin Act 49, is amended to read:

971.365 (1) (c) In any case under s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41 (3g) (dm), 1999 stats., or s. 961.41 (3g) (am), (c), (d), (e), ~~or~~ (g), or (h) involving more than one violation, all violations may be prosecuted as a single crime if the violations were pursuant to a single intent and design.

History: 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 490; 1995 a. 448; 1999 a. 48; 2001 a. 109.

SECTION 11. 971.365 (2) of the statutes, as affected by ~~2001 Wisconsin Act 109~~
and 2003 Wisconsin Act 49, is amended to read:

971.365 (2) An acquittal or conviction under sub. (1) does not bar a subsequent prosecution for any acts in violation of s. 961.41 (1) (em), 1999 stats., s. 961.41 (1m) (em), 1999 stats., s. 961.41 (3g) (a) 2., 1999 stats., or s. 961.41 (3g) (dm), 1999 stats., or s. 961.41 (1) (cm), (d), (e), (f), (g), or (h), (1m) (cm), (d), (e), (f), (g), or (h) or (3g) (am), (c), (d), (e), ~~or (g),~~ [✓] or (h) on which no evidence was received at the trial on the original charge.

(END)

Northrop, Lori

From: Wischnewski, Marne
Sent: Monday, October 13, 2003 10:44 AM
To: LRB.Legal
Subject: Draft review: LRB 03-0677/1 Topic: Possession of ecstasy

It has been requested by <Wischnewski, Marne> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-0677/1 Topic: Possession of ecstasy